

WAGANAKISING ODAWAK STATUTE #
INDIAN PREFERENCE IN TRIBAL EMPLOYMENT

SECTION I. PURPOSE

This Statute rescinds and replaces Waganakising Odawak Statute 2002-004. This Tribal Employment Statute is hereby enacted to mandate the preferential employment decisions of citizens of the Little Traverse Bay Bands of Odawa Indians, and other persons, by the Tribe and its business enterprises as afforded by under Title VII of the Civil Rights Act of 1964, as amended.

SECTION II. DEFINITIONS

A. "Tribal Business Enterprise" means any business owned, operated or licensed by the Little Traverse Bay Bands of Odawa Indians.

B. "Employment Preference" means a preference given to a job applicant or employee in hiring decisions when choosing between two or more qualified applicants or employees. Accordingly, the preference is applicable to employment decisions involving promotion, transfer, and reinstatement as well as to retention during layoffs and reductions in force.

C. "Immediate Family Member" means wife, husband, son, daughter, mother, father, brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, step-mother, step-father, step-brother, step-sister, step-son, step-daughter, or a person whose relationship with the tribal member is similar to that of persons who are related by blood or marriage.

SECTION III. EMPLOYMENT PRACTICES

A. Indian preference.

The Tribe and Tribal Business Enterprises shall grant an Employment Preference to the following persons in the following order:

1. Citizens of the Little Traverse Bay Bands of Odawa Indians,
2. Citizens of all other tribal nations,
3. Children of citizens of the Little Traverse Bay Bands of Odawa Indians,
4. Immediate family members of a citizen of the Little Traverse Bay Bands of Odawa Indians who are living in that Tribal citizen's household.
5. Non-tribal applicants and current non-tribal employees.

B. General.

Except as stated in Section III A., employment, promotion and training opportunities within the Tribe and Tribal Business Enterprises will be offered to qualified individuals without regard to race, religion, color, ancestry, gender, age or national origin.

C. Contractors and Subcontractors.

The Tribe and its business enterprises shall require adherence to this Statute when negotiating contracts.

SECTION IV. TRIBAL COURT

The Tribal Court shall have the jurisdiction to hear charges of violations of rights afforded by this Statute within the confines of Tribal employment for employees of the Little Traverse Bay Bands of Odawa Indians including violations by third-parties.

SECTION V. LIMITED WAIVER OF SOVEREIGN IMMUNITY

A. The Tribe clearly and expressly waives its sovereign immunity to the limited remedies as set forth in this Statute.

B. Officials, individual employees and/or managers of the Tribe, who act beyond the scope of their duties and authority in which the actions include either acting with malice or with reckless indifference are not immune from suit.

SECTION VI. LIMITED REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS

A. Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.

B. In any action filed under this Statute, the Tribal Court may grant the following remedies set forth:

1. *Equitable Remedies.* If the Tribal Court finds a violation occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:

- a)** An order to cease and desist from the unlawful practices specified in the order;
- b)** An order to employ or reinstate the employee, with or without back pay or reasonable front pay if reinstatement is unfeasible;

2. *Damages.* If the Tribal Court finds a blatant violation, the Tribal Court may additionally award compensatory, punitive damages or fines.

3. The total sum of compensatory, punitive damages and/or fines may not exceed \$50,000, excluding the amount for actual loss of wages.

4. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.

5. The Tribal Court may charge the non-prevailing party court costs.

6. If the Tribal Court finds that the non-prevailing party's claims were frivolous, the Court may fine the party and may order any other appropriate remedies as the Tribal Court deems.

SECTION VII. EXCLUSIVE JURISDICTION AND SOVEREIGN IMMUNITY

A. Exclusive Tribal Jurisdiction. The Tribal Court shall have exclusive jurisdiction over claims or actions of any kind allowed pursuant to this Statute.

B. No Waiver as to Other Forums. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe from any suit or action in state, federal or any other tribal court, before any state, federal or tribal agency or in any other forum or context whatsoever.

C. No Waiver as to Claim Defended by United States. Notwithstanding any other provision of this Statute, there shall be no waiver of sovereign immunity as to any claim of injury which is defended by the United States because such claim is deemed a claim against the United States under the Indian Self-Determination and Education Assistance Act, the Federal Tort Claims Act, or any other federal law. Upon certification by the Enjinaaknegeng that defense of any claim of injury has been tendered to the United States, any action or proceeding on such claim shall be stayed by order of the Tribal Court without bond. The action or proceeding in Tribal Court shall be dismissed, after notice to the parties and opportunity for a hearing, upon receipt of notice satisfactory to the Tribal Court that the United States has assumed defense of the claim of injury. The stay shall be dissolved and an order directing further proceedings in the action or proceeding on the claim of injury shall be entered by the tribal Court, after notice and hearing thereon, upon receipt of notice satisfactory to the Tribal Court that the United States has declined to assume defense of the claim of injury.

SECTION VIII. SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of Disclosure of Public Documents Statute is found by a court of competent jurisdiction to violate the Constitution, laws or Statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from these Rules and Procedures, the entirety of the balance of these Rule and Procedures remain in full and binding force and effect.

SECTION IX.**EFFECTIVE DATE**

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

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